



State of California
Employment Training Panel

Arnold Schwarzenegger, Governor

April 19, 2010

Deborah McCuiston
Director, Corporate Learning
Virgin America, Inc.
555 Airport Boulevard, Suite 200
Burlingame, CA 94010

Dear Ms. McCuiston:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET06-0223 for the period June 30, 2006 through June 29, 2008.

Also enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment A to the audit report.

We appreciate the courtesy and cooperation extended to our auditor during the audit. If you have any questions, please contact Stephen Runkle, Audit Manager, at (916) 327-4758.

Sincerely,

Original signed by

Stephen Runkle
Audit Manager

Enclosures

cc: Josie Yan, Corporate Learning Coordinator

VIRGIN AMERICA, INC.

Agreement No. ET06-0223

Final Audit Report

For The Period

June 30, 2006 through June 29, 2008

Report Published April 19, 2010

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AUDITOR'S REPORT

Summary

We performed an audit of Virgin America Inc.'s, Agreement No. ET06-0223, for the period June 30, 2006 through June 29, 2008. Our audit pertained to training costs claimed by the Contractor under this Agreement. Our audit fieldwork was performed during the period January 11, 2010 through January 14, 2010.

The Employment Training Panel (ETP) paid the Contractor a total of \$5,253,509.10. Our audit supported that \$5,227,599.10 is allowable. The balance of \$25,910 is disallowed and must be returned to ETP. The disallowed costs resulted from four trainees who failed to meet minimum wage requirements, one trainee who had ineligible training hours, four trainees who had unsupported class/lab training hours, and one trainee who failed to meet full-time employment requirements.

AUDITOR'S REPORT (continued)

Background

Now permanently based at San Francisco International Airport, Virgin America, Inc. (Virgin America) was in its start-up phase when development of this Agreement with ETP began. Although many other airports across the United States were offering whatever advantages they could to bring the home office of a new American owned and controlled airline to their cities, it was the San Francisco Bay Area's renowned ability to sustain an ample base of skilled workers, as well as the availability of ETP funds to assist with the significant up-front cost of customized training needed for a new workforce, that eventually helped convince Virgin America to choose San Francisco.

This Agreement was the first between Virgin America and ETP. The project was developed as an ETP Critical Proposal in cooperation with numerous state and local agencies including the Office of the Governor, the California Business Investment Services (CalBIS), SAMCEDA (the economic development entity for San Mateo county), and various cities including San Francisco and the City of South San Francisco. Training under this Agreement was specified for incoming Virgin America employees including highly specialized training for In-Flight Team Members (Pilots, Co-Pilots and Flight Attendants), as well as other airline operations staff, such as Aircraft Maintenance Technicians, Dispatchers and Guest Services Representatives etc. Therefore, the Agreement provided for training in Advanced Technology and Business Skills, as well as Commercial and Computer Skills.

This Agreement allowed Virgin America to receive a maximum reimbursement of \$9,991,602 for retraining 1,185 employees. During the Agreement term, the Contractor placed 898 trainees and was reimbursed \$5,253,509.10 by ETP.

Objectives, Scope, and Methodology

We performed our audit in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. We did not audit the financial statements of Virgin America. Our audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that Virgin America complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Trainees were eligible to receive ETP training.
- Training documentation supports that trainees received the

AUDITOR'S REPORT (continued)

training hours reimbursed by ETP and met the minimum training hours identified in the Agreement.

- Trainees were employed continuously full-time for 90 consecutive days after completing training, and the 90-day retention period was completed within the Agreement term.
- Trainees were employed in the occupation for which they were trained and earned the minimum wage required at the end of the 90-day retention period.
- The Contractor's cash receipts agree with ETP cash disbursement records.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion	As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported \$5,227,599.10 of the \$5,253,509.10 paid to the Contractor under this Agreement was allowable. The balance of \$25,910 was not earned according to the terms of the Agreement and must be returned to ETP.
Views of Responsible Officials	The audit findings were discussed with Deborah McCuiston, Director of Corporate Learning, at an exit conference held on January 14, 2010 and via e-mail on February 11, 2010. Ms. McCuiston agreed to bypass issuance of the draft report and proceed to the final audit report.
Audit Appeal Rights	If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).
Records	Please note the ETP Agreement, Paragraph 5, requires you to assure ETP or its representative has the right, "...to examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor... This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last payment from ETP to the Contractor, or the

AUDITOR'S REPORT (continued)

date of resolution of appeals, audits, or litigation, whichever is later.”

Stephen Runkle
Audit Manager

Fieldwork Completion Date: January 14, 2010

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement No. ET06-0223 and should not be used for any other purpose.

SCHEDULE 1 – Summary of Audit Results

VIRGIN AMERICA, INC.

AGREEMENT NO. ET06-0223

FOR THE PERIOD

JUNE 30, 2006 THROUGH JUNE 29, 2008

	<u>Amount</u>	<u>Reference*</u>
Training Costs Paid By ETP	<u>5,253,509.10</u>	
Costs Disallowed:		
Minimum Wage Requirement Not Met	12,020.00	Finding No. 1
Ineligible Training Hours	11,346.00	Finding No. 2
Unsupported Class/Lab Training Hours	2,544.00	Finding No. 3
Full-Time Employment Requirement Not Met	-	Finding No. 4
Total Costs Disallowed	<u>25,910.00</u>	
Training Costs Allowed	<u><u>5,227,599.10</u></u>	

* See Findings and Recommendations Section.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 – Minimum Wage Requirement Not Met

Virgin America, Inc. (Virgin America) payroll information shows that three Job No. 1 trainees and one Job No. 2 trainee did not meet the minimum wage requirement specified in the Agreement. As a result, we disallowed \$12,020 in training costs claimed for these trainees (\$1,536 + \$1,376 + \$1,368 + \$7,740).

Exhibit A, paragraph VII. A. of the Agreement between Virgin America and ETP states, "Each trainee must be employed full-time... for a period of at least ninety (90) consecutive days immediately following the completion of training... Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in [the Agreement]."

The Agreement required that Job No. 1 trainees earn a minimum wage rate of \$12.90 per hour for San Mateo county following the post-training retention period. The Agreement allowed the Contractor to include the dollar value of employer-paid health benefits to meet minimum wage requirements for Job No. 1. However, Virgin America payroll records show that Trainee No. 2 worked part-time and was therefore not offered health benefits per company policy. Virgin America records show Trainee Nos. 4 and 9 declined health benefits.

The Agreement required that Job No. 2 trainees earn a minimum wage rate of \$41.00 per hour following the post-training retention period. The Agreement did not allow the Contractor to include health benefits to meet minimum wage requirements for Job No. 2. Virgin America payroll records show Trainee No. 8 was employed as a pilot. Virgin America training records show he received Flight Simulator Training as provided for in Job No. 2 and for which ETP reimbursed the Contractor the agreed upon rate of \$318 per hour.

The table below shows reported wage rates, required wage rates, actual wage rates, and employer-paid health benefits for the trainees noted above.

Trainee No.	Job No.	Reported Wage Rate	Required Wage Rate	Wage Rate Per Payroll Records	Employer-Paid Health Benefits	Total Actual Wage Rate
2	1	\$10.50	\$12.90	\$10.50	\$0.00	\$10.50
4	1	\$10.96	\$12.90	\$11.48	\$0.00	\$11.48
8	2	\$44.00	\$41.00	\$17.76	N/A	\$17.76
9	1	\$10.50	\$12.90	\$10.50	\$0.00	\$10.50

Recommendation

Virgin America must return \$12,020 to ETP. The Contractor should verify employer-paid health benefit costs, as applicable, and ensure all trainees meet minimum wage requirements prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 – Virgin America's training and payroll documentation do not support the reported training hours for one Job No. 2 trainee. As a result, we disallowed \$11,346 in training costs claimed for this trainee.
Ineligible Training Hours

Exhibit A, paragraph VII. A of the Agreement requires that each trainee must be employed for a period of at least ninety (90) consecutive days immediately following the completion of training.

Virgin America reported that Trainee No. 1 completed training on January 17, 2008 and completed retention January 18, 2008 through April 18, 2008. However, Virgin America training records show Trainee No. 1 actually ended training on January 17, 2007. Based on his actual end of training, Trainee No. 1 was required to complete retention January 18, 2007 through April 18, 2007. However, Virgin America payroll information indicates that Trainee No. 1 involuntarily terminated employment on March 29, 2007. Thus, Trainee No. 1 was retained for only 70 days of the 90 days required by the Agreement.

Based on the facts stated above, instead of disallowing Trainee No. 1 completely from placement, ETP auditor adjusted this trainee's retention period back to December 29, 2006 through March 28, 2007 to allow him to meet the 90-day retention requirement prior to termination. This adjustment caused training that occurred from January 2, 2007 through January 17, 2007 to be ineligible. As a result, 83.92 training hours paid for Trainee No. 2 that occurred during that period are disallowed. Disallowed training hours include 33.92 hours of Flight Simulator Training (\$318 per hour), 10 hours of Advanced Technology classroom training (\$24 per hour), and 40 hours of Computer Based Training (\$8 per hour).

Recommendation Virgin America must return \$11,346 to ETP. In the future, the Contractor should ensure that trainees complete the required 90-day retention period immediately following the completion of all training hours reported to ETP for reimbursement.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – Virgin America's training documentation did not support training hours reported for four Job No. 1 trainees. Therefore, we disallowed \$2,544 in training costs claimed for these trainees (\$240 + \$128 + \$128 + \$2,048).
Unsupported Class/Lab Training Hours

Title 22 California Code of Regulations (CCR), Section 4442(a) requires the Contractor to maintain and make available records that clearly document all aspects of training. All classroom/laboratory training records must include hours of attendance and dates of training, be certified daily by the instructor during training, signed (or initialed) daily by the trainee, and signed by the trainer for each type of training.

Paragraph 2(b) of the Agreement states: "Reimbursement for class/lab and videoconference training for trainees in job number one (1) will be based on the total actual number of training hours..., up to the maximum specified in Chart 1, providing the minimum and no more than the maximum hours are met." Exhibit A, Chart 1 of the Agreement requires Job No. 1 trainees to complete between 24 to 500 class/lab hours.

Virgin America reported to ETP that Trainee No. 3 received 7.5 hours per day of training on December 17 and 18, 2007. However, ETP auditor did not find training rosters that supported these reported training sessions. Since training records maintained by Virgin America for Trainee No. 3 do not support any training occurred on December 17 and 18, 2007, 15 hours of class/lab training (\$16 per hour) are disallowed.

Virgin America reported to ETP that Trainee Nos. 5 and 6 each received 8 hours of training on April 25, 2008. However, the multi-day class/lab roster maintained by Virgin America for the period April 21, 2008 through April 25, 2008 did not include trainee signatures or initials for April 25, 2008. In fact, the roster included an "X" on that date for these trainees to indicate training did not occur on that date. Since Virgin America training records for Trainee Nos. 5 and 6 do not support any training occurred on April 25, 2008, 16 hours of class/lab training (\$16 per hour) are disallowed.

Virgin America reported to ETP that Trainee No. 7 received 128 hours of training from November 8, 2006 through November 29, 2006. However, class/lab training rosters maintained by Virgin America include Trainee No. 7 recorded as both a trainee and as the sole instructor for all of the training dates within this period. Virgin America cannot receive reimbursement for employees acting in the capacity of instructors. Thus, 128 hours of class/lab training (\$16 per hour) are disallowed.

FINDINGS AND RECOMMENDATIONS (continued)

Recommendation Virgin America must return \$2,544 to ETP. In the future, the Contractor should ensure that training records support hours submitted for reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 4 –
Full-Time
Employment
Requirement Not
Met

Virgin America payroll records revealed that one Job No. 1 trainee did not meet full-time employment requirements upon completion of training. We previously disallowed the entire \$1,536 in training costs claimed for Trainee No. 2 in Finding No. 1. Thus, we disallowed no further training costs for this trainee.

Exhibit A, paragraph VII. A. of the Agreement between ETP and Virgin America states, "Each trainee must be employed full-time, at least 35 hours per week, with the Contractor for a period of at least ninety (90) consecutive days immediately following the completion of training. The period shall be completed no later than the last day of this Agreement..."

Virgin America reported that Trainee No. 2 completed a post-training retention period from February 23, 2008 through May 23, 2008 and was employed full-time. Trainee No. 2 was not employed as an In-Flight Team Member and is therefore subject to the full-time requirement of at least 35 hours per week, as stated above. However, based on payroll records provided by the Contractor, this trainee was actually employed on a part-time basis working only an average of 15.1 hours per week during his retention period.

Furthermore, Employment Development Department (EDD) base wage information also supports that Trainee No. 2 only worked part-time during the reported retention period and was not employed full-time during any subsequent 90-day period up to the Agreement end date or until September 24, 2008, the extended deadline for retention completion approved by ETP on June 29, 2006.

Recommendation

In the future, the Contractor should ensure all trainees meet full-time employment requirements during their post-training retention period before claiming reimbursement from ETP.

ATTACHMENT A - Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 2006